# PENSION MANAGEMENT OVERSIGHT COMMISSION

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## MEETING MINUTES[1]

**Meeting Date:** September 28, 2009
**Meeting Time:** 10:30 A.M.
**Meeting Place:** State House, 200 W. Washington St., Room 431
**Meeting City:** Indianapolis, Indiana
**Meeting Number:** 2

**Members Present:** Sen. Phil Boots, Chairperson; Sen. Robert Deig; Sen. Karen Tallian; Rep. David Niezgodski; Rep. Ed DeLaney; Rep. Woody Burton; Rep. Suzanne Crouch; Matthew Buczolich; Kip White; Steve Meno; Randy Novak.

**Members Absent:** Sen. R. Michael Young.

Senator Phil Boots, Chairperson, called the meeting to order at 10:30 a.m.

**Indiana Department of Labor's role in the adjudication of wage claims.**

Senator Karen Tallian distributed a handout (Exhibit 1) to members of the Pension Management Oversight Commission (Commission) describing various situations in which it is unclear whether a wage dispute is required to be brought before the Indiana Department of Labor (IDOL) for administrative review. The wage payment statutes (IC 22-2-5) apply to employees who voluntarily left employment and to individuals still employed. The wage

[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.in.gov/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

payment statutes allow an employee to file a lawsuit without administrative review by IDOL. The wage claim statutes (IC 22-2-9) apply to employees separated from work by their employer and to situations where work has been suspended as a result of an industrial dispute. The wage claim statutes require the employee to file a complaint with the IDOL. The IDOL is authorized to review wage claims of less than $6,000.

Senator Tallian indicated that certain problems arise in the application of the wage claim and the wage payment statutes. She asked if there was a reason to treat employees differently depending on whether the employee quit or was fired. Senator Tallian described certain scenarios where it is unclear whether the employee quit or was fired. She also described situations in which an employee may have a claim for both back wages and for future wages under a contract dispute. Under current law, the employee could be required to file two suits to resolve the dispute. Senator Tallian then indicated that uncertainty about which statutes to use may cause additional claims to be filed with IDOL.

Some cases involve multiple employees in plant lay-offs or plant closures that are not necessarily considered an industrial dispute. In such situations, Senator Tallian indicated that submission to IDOL for an initial determination may alleviate the need to file multiple court cases.

Senator Tallian suggested that an employee should have the option to elect to file a complaint with IDOL for claims less than $6,000, regardless of whether the employee has voluntarily or involuntarily separated from employment. The larger claims should be reserved for a trial court. In certain situations involving multiple claimants, mandatory review by IDOL should be required.

Sean Keefer, Deputy Commissioner of IDOL, introduced Rick Ruble, General Counsel of IDOL. Mr. Ruble provided some examples of additional situations in which it is unclear whether a complaint should be filed with IDOL. Mr. Ruble indicated that the wage claim statutes do not address wage claims exceeding $6,000. He also indicated that IDOL may have difficulty enforcing certain IDOL decisions when the decision is ignored by the employer.

In response to a question from Senator Tallian, Mr. Ruble stated that IDOL refers wage claims to the Attorney General. The Attorney General currently contracts with a private attorney to litigate wage claims.

Senator Boots inquired about the number of employees IDOL has to administer wage claims. Mr. Keefer indicated that IDOL has one administrative assistant.

**Legislative Issues for the Public Employees' Retirement Fund (PERF)**

Steve Barley, PERF Deputy Director, and Kathryn Cimera, PERF General Counsel, presented two legislative issues.

*A. Eliminate Role of Treasurer of State as Treasurer of Certain Funds Administered by PERF*

PERF indicated that HEA 1546-2009 eliminated the Treasurer of State as the treasurer of PERF and reassigned the Treasurer's duties to the PERF board and the executive director. Ms. Cimera stated that it would be helpful to make this change in other funds administered by PERF. Those funds include the:

(1) Prosecuting Attorney's Retirement Fund;
(2) 1985 Judges' Retirement System;
(3) 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund); and
(4) Legislators' Retirement System.

Ms. Cimera indicated that she believed the exclusion of these funds in HEA 1546-2009 was a technical oversight. She stated that PERF administers these funds and the Treasurer of State's current role is minimal.

*B. Withdrawal from Annual Savings Account (ASA)*

Ms. Cimera testified that PERF requested changes regarding a member's ability to make a withdrawal from the member's ASA before the member is eligible to receive a retirement benefit. Senator Boots requested PD 3082 (Exhibit 2) to be distributed. PD 3082 provides that certain members of PERF and the Indiana State Teachers' Retirement Fund (TRF) may withdraw the member's ASA if the member has separated from employment and is not employed in a covered position for 30 days. The PD also removes the requirement that certain members must be members of: (1) PERF after December 31, 2008; or (2) TRF after June 30, 2009, in order to request a distribution from the member's ASA. Senator Boots indicated that the Commission will vote on whether to recommend the draft to the General Assembly at the next meeting.

**Legislative Issues for the TRF**

Steve Russo, TRF Director, and Tom Davidson, TRF General Counsel, presented three legislative issues. Mr. Russo distributed a summary of the issues to members of the Commission. (Exhibit 3).

*A. Statute of Limitations*

Mr. Russo explained that PERF has a one year statute of limitations for claims of error regarding creditable service or benefit determination. TRF currently does not have such a provision. Mr. Russo indicated that it would be helpful to have the same provision as PERF. Mr. Russo testified that TRF often receives requests that go back many years. These requests are difficult for TRF to administer.

Senator Tallian asked when the statute of limitations would begin. Mr. Davidson stated that it would begin when TRF determines the benefit.

Kip White asked whether TRF would be open to a two year statute of limitations. Mr. Russo indicated that TRF was open to such a proposal.

Senator Deig asked whether PERF provided notice to its members of the statute of limitations when PERF provides the determination of benefit. Mr. Barley stated that PERF does not provide a notification.

Senator Boots asked whether TRF would adjust retirement benefits if an error is found. Mr. Davidson indicated that they would make adjustments. However, TRF does not make retroactive adjustments in certain cases.

Andrew Thomas, representing the Indiana Retired Teachers' Association, stated that, at a minimum, a statute of limitations should not be less than two years. He indicated that many retirees move to other states or may be in Indiana for one half of the year, making it difficult for those retirees to comply with a one year statute of limitations.

*B. Beneficiary Allocations*

Mr. Russo testified that, TRF members can only designate beneficiaries in equal shares. He suggested that the TRF board be granted the flexibility to adopt a rule allowing a member to make designations among the member's beneficiaries in unequal increments.

*C. Failure to Make Timely Contributions*

Mr. Russo indicated that IC 5-10.4-7-7, which pertains to reporting requirements by a school covered by the fund, was amended in both P.L. 1-2009 and P.L. 165-2009 during the last regular session, thus, creating two versions of the statute. Mr. Russo stated that one version does not contain language which permits TRF to establish by rule due dates for employer contributions and reports. He requested that the statute be fixed.

(Note: After the Commission meeting, LSA staff conferred with Tom Davidson and found that IC 5-10.4-7-7, version (a), is effective until July 1, 2009 and IC -5-10.4-7-7, version (b), becomes effective on July 1, 2009, and no conflict exists. (See Exhibit 3, page 5)).

Mr. Russo also suggested reducing from 30 to 15, the number of days, after which TRF may assess penalties for late employer contributions. Mr. Russo indicated that the safe harbor provision in many private pension plans is seven days.

**Public Safety Issues**

Tom Hanify of the Professional Firefighters Union of Indiana discussed four topics. Mr. Hanify provided a Power Point Presentation. (Exhibit 4).

*A. Deferred Retired Option Plan (DROP)*

Mr. Hanify provided members of the Commission a handout describing a DROP (back) proposal. (Exhibit 5). The proposed DROP (back) would allow a member of the 1977 Fund to enter the DROP (back) on the date the member separates from service. The retirement benefit of the member entering the DROP (back) would be computed as if the member had retired on the day by up to three years before the member's separation date. The member would receive a reduced monthly benefit based on the adjusted retirement date. In addition, the member would receive a lump sum equal to the product of the member's reduced monthly benefit time the number of months between the member's separation date and the earlier date selected by the member..

In a response to a question from Representative Niezgodski, Mr. Hanify indicated that the lump sum payment would likely be paid to the member within 30 days of the member's separation from employment.

Responding to question from Senator Tallian, Mr. Hanify indicated that this proposal would allow many cities and towns to right-size their police and fire departments. It would provide an incentive to some of the older and highest paid employees to consider retirement.

Senator Tallian asked why Mr. Hanify is proposing a three year DROP (back). Mr. Hanify indicated that the DROP currently allows member to continue to work and earn a salary up to three years and then retire with a pension benefit, plus receive an additional amount equal to the total of the pension benefits that the member would have been paid during the same period had the member retired. His proposal was made to be consistent with the current DROP.

Rhonda Cook, representing the Indiana Association of Cities and Towns (IACT), testified that the IACT supports the DROP (back) proposal as long as the proposal was limited to the 1977 Fund. She also expressed concern about a potential increase in employer contributions.

Doug Todd, actuary for PERF, walked the Commission members through a handout (Exhibit 6) that contained a hypothetical fact pattern showing the effect on the 1977 Fund under various DROP options. Mr. Todd demonstrated that in situations where an employee's salary remained the same over a three year period prior to retirement, the DROP (back) option could result in a cost to the fund.

Richard Lenar, actuary for PERF, testified that the DROP (back) proposal would create a risk of adverse selection by members of the 1977 Fund. A member would have the option of choosing to retire with full benefits at retirement or retiring at a reduced benefit plus a lump sum. The employee will pick the best option for them knowing of the actuarial value of their benefit at the time of retirement as well as on the DROP (back) date. The employee would likely choose the option with the highest actuarial value.

Mr. Todd then explained the actuarial effect on the 1977 Fund under a partial lump sum option. He explained that this option calculated the benefit on the retirement date instead of the DROP (back) date. This removes the risk of additional costs to the fund as well as the risk of adverse selection. The employee would still receive a lump sum distribution with a reduced retirement benefit.

Tom Hanify testified that he supported the partial lump sum distribution option.

Ken Gilliam, representing the Indiana Fire Chiefs Association (IFCA), testified in support of lump sum distribution proposal if it would not have a negative impact on the 1977 Fund.

*B. Hiring Preference for Laid Off Police Officer or Firefighter*

Mr. Hanify distributed a handout containing proposed language for a hiring preference for a police officer or firefighter laid off by another local unit. (Exhibit 7). He indicated that the proposed language would make it optional for the hiring authority to include a hiring preference. The local units would be able to save costs associated with training a police officer or firefighter laid off by another local unit. Mr. Hanify indicated that the employee would still have to have a background check and pass the PERF mental and physical requirements.

Senator Boots asked whether the provision would conflict with a local unit's contract with its police officers or firefighters. Mr. Hanify indicated that the provision would not conflict because the local unit would be allowed to either opt in or opt out. In response to a question from Mr. White, Mr. Hanify indicated that he did not believe that the hiring preference would be a bargaining point when a hiring authority negotiates an employment contract because the provision offers a hiring preference to individuals not currently employed by the local unit.

Rhonda Cook testified that the IACT would support a proposal for a hiring preference if the provision was optional for the local unit.

Ken Gilliam testified that the IFCA supports the proposal as long as it is optional.

*C. Physical and Mental Testing*

Mr. Hanify suggested that the PERF board should be required to review mental and physical testing requirements for 1977 Fund applicants every five years. Currently, the Indiana Administrative Code in 35 IAC 2-9-4 (Exhibit 8) requires police officers and firefighters to take the Minnesota Multiphasic Personality Inventory (MMPI).

In a response to a question from Senator Tallian, Mr. Barley stated that the PERF board currently receives recommendations from the Indiana Department of Health before recommending a test.

Senator Boots asked whether the cost of a new test would be cost restrictive for local units. Mr. Hanify clarified that he was only requesting the PERF board to review the standard every five years. The cost of the test should be a factor in the PERF board's consideration. Senator Boots then asked whether Mr. Hanify was requesting that the requirement for the PERF board to review the testing requirements be in the Indiana Code. Mr. Hanify indicated that he preferred such a requirement.

Rhonda Cook testified that the IACT did not oppose a proposed requirement for the PERF board to review the 1977 Fund mental and physical testing requirements. She indicated that the mental and physical testing should be re-done if the employee has been laid off for more than three years.

Ken Gilliam testified in support of the proposal.

*D. Removal of Potential Cost of Living Adjustment (COLA) Decrease for 1977 Police Officers' and Firefighters' Pension and Disability Fund*

Mr. Hanify asked the Commission to amend the Indiana Code to remove the possibility of a decrease in the 1977 Fund pension benefit because of a negative COLA. He then distributed a copy of IC 36-8-8-15 pertaining to the 1977 Fund COLA. (Exhibit 9). Senator Boots then distributed PD 3070 (Exhibit 10) to the members of the Commission. PD 3070 provides that an annual cost of living adjustment for monthly retirement benefits received by a member or survivor of the 1977 Fund may not be used to decrease the member's monthly benefit.

Doug Todd testified that PD 3070 would not have a fiscal impact.

Ken Gilliam testified in support of the proposal.

Senator Boots indicated that the Commission will vote on whether to recommend PD 3070 to the General Assembly at the next meeting.

**The Fiscal Impact of Providing a State Contribution for a Magistrate to Transfer PERF Service Credit to the 1985 Judges' Retirement System**

Representative Niezgodski discussed a letter he received from a magistrate describing the amount the magistrate was required to pay to transfer service credit from PERF to the 1985 Judges' Retirement System. (Exhibit 11). In the letter, the magistrate indicated that he would have to pay $278,842.76 in order receive six years of credit as a magistrate. The letter states that a judge who commenced service as a judge on the same date as the magistrate paid approximately $43,000.00 for the same period of time.

Senator Boots then distributed PD 3073 (Exhibit 12) which provides that the State will provide a contribution for a magistrate to transfer PERF service credit to the Judges' 1985 Benefit System in an amount determined necessary to amortize the service liability over a period of up to 10 years.

Amy Flack, representing the Indiana Judges' Association, introduced Craig Bobay, who is the Magistrates' Representative to the Indiana Judges' Association. Mr. Bobay provided the Commission members copies of his testimony. (Exhibit 13). Mr. Bobay was grateful for legislation in 2008 allowing magistrates to become members of the Judges' 1985 Benefit System. However, he expressed concern that new judges have the option to purchase prior PERF magistrate service credit at six percent of the amount they would have contributed to the judges pension had they been a judge when accruing those prior PERF benefits. Current law requires magistrates to purchase the prior service credit at the total cost of service. Mr. Bobay stated that this requirement was difficult for older magistrates with more service to transfer. Mr. Bobay indicated that magistrates were required to make the election next year and the current cost to magistrates made it impossible for them to participate.

Senator Deig asked whether a county could pay part or all of the cost of the transferred service. Mr. Bobay indicated that he believed that might be possible.

Doug Todd distributed to the Commission members a handout which compares the benefit formula; form of benefit; and the post-retirement benefit increases for a member of PERF with a a member of the Judges' 1985 Benefit System. (Exhibit 14). The handout showed that the benefits for a participant retiring at age 65 with 22 years of service with a $100,000 salary would have an actuarial value of $248,043 if the participant was a member of PERF and $921,378 if the participant was a member of the Judges' 1985 Benefit System.

In response to Rep. Niezgodski, Mr. Todd indicated that contributions to PERF were less and if payments were lowered for the Judges' 1985 Benefit System there would be a cost to the fund. He indicated that if a magistrate is younger the cost could be spread out more than that for an older magistrate.

Representative DeLaney expressed concern for a magistrate's ability to vest in the Judges' 1985 Benefit System.

Mr. Bobay requested assistance for those magistrates who are getting close to retirement.

Representative Niezgodski expressed his desire to find middle ground to assist the magistrates.

**Next Meeting Date**

The Commission selected Monday, October 19, 2009, at 1:00 p.m. as its next meeting date.

**Adjournment**

The Chairperson adjourned the meeting at 12:20 p.m.